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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re VICTORIA H., a Person Coming
Under the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

STEVEN A. et al.,

Defendants and Appellants.

E033661

(Super.Ct.No. J-95379)

OPINION

APPEAL from the Superior Court of Riverside County. Robert W. Nagby,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Dismissed in part; affirmed in
part.

Law Offices of Vincent W. Davis, Vincent W. Davis and Beatrice K. Fung for
Defendants and Appellants.

William C. Katzenstein, County Counsel, and Julie A. Koons-Jarvi, Deputy
County Counsel, for Plaintiff and Respondent.

John L. Dodd, under appointment by the Court of Appeal, and Karen Dodd for

Minor.

1. Introduction

Steven A. and Q. A., grandparents of Victoria H., appeal from the juvenile court's orders terminating their de facto parent status, denying their motions under Welfare and Institution Code section 388,¹ and granting a restraining order against grandmother. The Riverside County Department of Public Social Services (DPSS) moved to dismiss grandparents' appeal as moot because the juvenile court has terminated the dependency and Victoria's adoption has become final.

We dismiss the appeal of the orders terminating grandparents' de facto parent status and denying their section 388 motions. These orders no longer present a live controversy or any issues that continue to affect the parties' rights. This court and the court below is incapable of providing any effective relief.

As to the restraining order, we deny DPSS's motion to dismiss the appeal. The restraining order is a separately appealable order that remains in effect even after the juvenile court's termination of its jurisdiction. In challenging the restraining order, grandmother claims that insufficient evidence supported the court's factual findings that she inappropriately contacted Victoria's former prospective adoptive parents. Because substantial evidence supported the court's findings, we reject grandmother's claim and we affirm the court's decision to grant the restraining order.

¹ All further statutory references will be to the Welfare and Institutions Code unless otherwise stated.

2. Factual and Procedural History

The juvenile court declared jurisdiction over Victoria H., who was born in August of 1998, after police officers arrested mother for sniffing paint and exposing Victoria to certain chemicals in an unventilated apartment. After failed reunification efforts, the court ultimately terminated mother's parental rights and set adoption as Victoria's permanent plan.

Upon the termination of mother's parental rights, the court granted grandparents' motion for de facto parent status. During the dependency proceedings, the court placed Victoria with her maternal grandparents from about February 1999 to September 2001. For various reasons, the social worker found grandparents' home unsuitable for continued placement.

After Victoria's removal from grandparents' custody and based on DPSS consideration of relative placement alternatives, the court ordered placements with both relative and nonrelative caretakers. None of these placements, however, proved successful. In June 2002, the court placed Victoria with nonrelative, adoptive parents. At about this time, grandparents filed two section 388 petitions to request that the court return Victoria into their care and custody and to object to the nonrelative, adoptive placement. The court denied both petitions.

On January 9, 2003, DPSS filed a section 388 petition to terminate grandparents' de facto parent status. DPSS alleged that grandparents have not had contact with Victoria for over 15 months and no longer possessed unique, relevant information concerning

Victoria. DPSS noted that grandparents were twice assessed and found unsuitable as prospective adoptive parents. DPSS alleged that grandparents obtained confidential information, namely, prospective adoptive parent's identity and address, and used this information to harass them with telephone calls, letters, and in-person visits. At the request of the prospective adoptive parents, DPSS removed Victoria and placed her in another confidential placement.

Based on grandmother's unannounced visit, the court issued a temporary restraining order against her. DPSS later requested a permanent restraining order.

On February 6, 2003, grandparents filed a motion to vacate "all orders in this matter." In their motion, grandparents claimed that DPSS committed extrinsic fraud by failing to file a section 387 petition to remove Victoria from their home on September 20, 2001. Grandparents also claimed that DPSS abused its authority by placing Victoria with nonrelative caretakers.

The court denied a hearing on grandparents' motion to vacate all previous orders. The court explained that it lacked jurisdiction to revisit and set aside its order following the section 366.26 hearing. The court noted that grandparents filed two section 388 motions after the 366.26 hearing, both of which were denied. The court also noted that, because DPSS placed Victoria with grandparents under a general placement order, it was not required to file a section 387 petition to remove Victoria when the placement became unsuitable.

The court granted DPSS's section 388 petition to set aside or terminate grandparents' de facto parent status. The court also granted DPSS's application for a permanent restraining order against grandmother.

3. Mootness: Orders Granting and Denying the Parties' Section 388 Petitions

Victoria was adopted on December 2, 2003. Shortly thereafter, DPSS requested an order terminating Victoria's dependency. The court issued the requested order on December 8, 2003. On January 8, 2004, DPSS filed a motion to dismiss the appeal as moot. In a letter brief, Victoria's attorney joined in DPSS's motion.

Grandparents urge this court to deny the motion on the following grounds: DPSS failed to comply with California Rules of Court, rule 41(a); there remain issues that continue to affect the parties' rights, and their appeal raises issues of continuing public importance that are likely to reoccur, yet evade review.

This court reserved ruling on DPSS's motion to dismiss the appeal. After considering the parties' arguments, we now grant the motion in part and deny the motion in part. We briefly note that, although grandparents contend that DPSS failed to provide a declaration or affidavit in support of its motion, California Rules of Court, rule 41(a) requires either an affidavit or "other evidence" when the motion is based on a matter not appearing in the original record. The attached order terminating the dependency would suffice as "other evidence."

Generally, an appellate court’s jurisdiction extends only to actual controversies for which the court can grant effective relief.² If subsequent acts or events have rendered the questions raised in the appeal moot, then the action no longer presents a justifiable controversy.³ As an exception to this general rule, the court may decide an issue that is one of continuing public importance that is likely to reoccur, yet evades review.⁴ “Accordingly, ‘if a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot.’ [Citations.]”⁵

In the context of juvenile dependency law, appellate courts have confronted cases where the court’s rulings have resulted in a final and permanent change to the case; however, there remains an issue that continues to affect the parties’ rights.⁶ Because a live controversy between the parties still exists, these cases are not moot, even if the court terminates its jurisdiction over the matter: “In juvenile cases, when an issue raised in a

² *In re Christina A.* (2001) 91 Cal.App.4th 1153; *In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.

³ *In re Christina A., supra*, 91 Cal.App.4th at page 1158.

⁴ *In re Christina A., supra*, 91 Cal.App.4th at page 1158; see also *In re John W.* (1996) 41 Cal.App.4th 961, 969.

⁵ *In re Christina A., supra*, 91 Cal.App.4th at page 1158.

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timely notice of appeal continues to affect the rights of the child or the parents, the appeal is not necessarily rendered moot by the dismissal of the underlying dependency proceedings. [Citation.] Rather, the question of mootness must be decided on a case-by-case basis.”⁷

When a case involves a final ruling that may render the appeal moot, we must first determine on a case-by-case basis whether the appellant’s appeal raises an issue that continues to affect the parties’ rights for which the appellate court can provide effective relief. If not, then the case is moot and must be dismissed unless we find that the case presents an issue that is one of continuing public importance that is likely to reoccur, yet evades review.

A handful of courts have had occasion to consider the effect of the juvenile court’s termination of jurisdiction on the issues involved in a particular case. In *In re Hirenia C.* (hereafter *Hirenia C.*), the child’s de facto parent, who was the child’s foster parent and had substantial contact with the child for about three and a half years, requested visitation after her estranged partner adopted the child and restricted her contacts. On the question of mootness, the court held that the juvenile court, under the authority and procedure established in section 362.4, was able to enter an enforceable order for visitation so long

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⁶ See *In re Hirenia C.* (1993) 18 Cal.App.4th 504, 517; *In re Joel H.* (1993) 19 Cal.App.4th 1185, 1193.

⁷ *In re Hirenia C.*, *supra*, 18 Cal.App.4th at pages 517-518.

as the order served the child's best interests.⁸ Even after the juvenile court terminates its jurisdiction, the court's visitation order may be transferred to the family court or enforced by the superior court.⁹ There remained, therefore, a live controversy concerning the de facto parent's right to visitation.¹⁰

In *In re Joel H.* (hereafter *Joel H.*),¹¹ the child's great-aunt appealed the court's order removing her great-nephew from her physical custody under section 387. While her appeal was pending, the juvenile court returned the child to his mother and terminated the dependency. The great-aunt, who was recognized as the child's de facto parent, claimed that insufficient evidence supported the juvenile court's finding that she had neglected or abused the child.

In *Joel H.*, the department of social services (DSS) claimed that the appeal was moot because the juvenile court had terminated its dependency jurisdiction over the child. In addressing the jurisdictional question, the appellate court acknowledged that the appeal could nevertheless proceed if it involved an actual controversy. The appellate court held that an order terminating dependency jurisdiction does not necessarily render

⁸ *Hirenia C.*, *supra*, 18 Cal.App.4th at page 518.

⁹ *Hirenia C.*, *supra*, 18 Cal.App.4th at page 518; see also *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548.

¹⁰ *Hirenia C.*, *supra*, 18 Cal.App.4th at page 520.

¹¹ *Joel H.*, *supra*, 19 Cal.App.4th 1185.

ineffective the reviewing court's power to grant relief.¹² Because of the likelihood of a future dependency proceeding, the appellate court held that it was able to provide effective relief by preventing the juvenile court's finding of neglect and abuse from having a res judicata effect in the future proceeding.¹³

Unlike in *Hirenia C.* and *Joel H.*, an order terminating dependency jurisdiction may eliminate all issues, leaving nothing left for an appellate court to review and remedy. Such was the case in *In re Michelle M.* (hereafter *Michelle M.*)¹⁴ There, the juvenile court, after finding that the father sexually abused his children, placed the children with their mother. The court ordered no visitation for father except, if deemed appropriate, during meetings in a therapeutic setting. The court later terminated its jurisdiction over the children. Although the father appealed from the court's jurisdictional and dispositional orders, the father failed to appeal from the court's order terminating its jurisdiction.

In that case, the appellate court held that it lacked jurisdiction to act upon any order.¹⁵ Because the juvenile court terminated its jurisdiction, there was no ongoing

¹² *Joel H.*, *supra*, 19 Cal.App.4th at page 1193.

¹³ *Joel H.*, *supra*, 19 Cal.App.4th at page 1193; See also *In re Dylan T.* (1998) 65 Cal.App.4th 765, 770.

¹⁴ *In re Michelle M.* (1992) 8 Cal.App.4th 326.

¹⁵ *Michelle M.*, *supra*, 8 Cal.App.4th at pages 328-329.

controversy for which the appellate court could provide any effectual relief.¹⁶ While the court recognized that other courts have resolved the mootness problem by considering the collateral consequences of the court's findings and orders in other proceedings, such potential consequences usually do not provide grounds for asserting jurisdiction once jurisdiction has been terminated.¹⁷ Moreover, "[t]he remedy is in those proceedings themselves, and not an appeal from a matter where jurisdiction has been terminated and is final. In such a case, jurisdiction cannot be conferred upon the appellate court. [Citation.]"¹⁸

In a recent case, *In re Albert G.* (hereafter *Albert G.*),¹⁹ after receiving allegations of physical abuse concerning Albert, the Los Angeles County Department of Children and Family Services (DCFS) removed him from his parents and placed him for adoption at the home of his maternal aunt, where he continued to live from January 1994 to July of 2001. Albert's two older siblings, who were under the jurisdiction of the dependency court in Hawaii, where they were born, also were placed with the maternal aunt. However, based on the maternal aunt's unstable living situation, her indecisiveness

¹⁶ *Michelle M.*, *supra*, 8 Cal.App.4th at page 329.

¹⁷ *Michelle M.*, *supra*, 8 Cal.App.4th at page 330, citing *In re Kristin B.* (1986) 187 Cal.App.3d 596, 605 (applying mootness doctrine after order terminating parental rights, not order terminating jurisdiction).

¹⁸ *Michelle M.*, *supra*, 8 Cal.App.4th at page 330.

¹⁹ *In re Albert G.* (2003) 113 Cal.App.4th 132.

concerning the adoption, and some negative reports concerning her, DCFS removed the children and placed them in foster care. Albert was placed with his paternal grandparents and the older siblings were returned to Hawaii. Albert's maternal aunt went to Hawaii and successfully adopted the older siblings. The Hawaii court found that the negative reports were unfounded. In California, however, the paternal grandparents adopted Albert and the court terminated its jurisdiction. Albert's maternal aunt filed a section 388 petition seeking to adopt Albert. The court denied the petition.

On appeal, the maternal aunt challenged Albert's removal from her custody and the court's denial of her section 388 petition. In dismissing the appeal as moot, the court reasoned as follows: "Albert's adoption meant the trial court could not grant the change appellant sought in her petition, and also means that there is no remedy we could grant on appeal. 'After adoption, the adopted child and the adoptive parents shall sustain towards each other the legal relationship of parent and child and have all the rights and are subject to all the duties of that relationship.' [Citation] Albert cannot be removed from his adoptive parents on a section 388 petition. Instead, like every other child, he could only be removed under the procedures and with the showings required by section 300.'"²⁰ The court held that it was powerless to grant any effective relief on appeal, i.e., the court could not grant the petition and return the child to the maternal aunt.²¹

²⁰ *Albert G.*, *supra*, 113 Cal.App.4th at page 135.

²¹ *Albert G.*, *supra*, 113 Cal.App.4th at page 135.

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As in the *Michelle M.* and *Albert G.* cases, this court is incapable of granting relief that would have any effect on the dependency proceedings or any collateral actions. The adoption is final and the court terminated its jurisdiction. As stated in *Albert G.*, once the child is adopted, the court or DPSS cannot remove the child from his adoptive parents unless there are grounds for removal under section 300.²² This court has no authority to reverse the juvenile court's rulings to require DPSS to return the child into grandparents' custody or reconsider child's other relatives as alternative adoptive parents.

Unlike in the *Hirenia C.* and *Joel H.* cases, there is no ongoing controversy in the case, such as a request for visitation, or no danger that the court ruling would have an additional collateral effect on any subsequent proceeding. For example, if a new section 300 petition is filed on behalf of Victoria, nothing would prevent DPSS from considering Victoria's other relatives as placement alternatives. Even if the juvenile court's earlier orders affected some future proceeding, the orders were made final long before grandparents filed their notice of appeal in this case. Those orders, including the court's denial of grandparents' section 388 petitions, are not subject to review upon termination of the dependency.

Furthermore, as noted in DPSS's motion to dismiss, under California Rules of Court, rule 39.1, subdivision (f), an appellant has 60 days to file a notice of appeal to

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²² *Albert G.*, *supra*, 113 Cal.App.4th at page 135.

challenge the court's order.²³ An appellant may not attack the validity of a prior appealable order after the statutory period for filing an appeal has expired.²⁴ This rule promotes finality and the expeditious resolution of cases concerning children and their interests in securing stable and permanent homes.²⁵ Similarly, even if the appellant files a timely notice of appeal from the earlier order, the appellant's failure to raise a specific objection during the proceedings or present the claim in his appeal from the order, precludes the appellant from raising the claim after a subsequent order.²⁶

In this case, most of grandparents' claims challenge the juvenile court's section 366.26 order. The juvenile court held the section 366.26 hearing on October 30, 2001. Grandparents complain that the court failed to provide them with a hearing and an opportunity to be heard concerning Victoria's removal from their home on September 20, 2001. They also claim that, at the time of the section 366.26 hearing, a conflict of interest existed between minor's counsel and the social worker's supervisor. Grandparents failed to raise these specific claims in their appeal from the court's section 366.26 order. Grandparents, therefore, have waived these claims. Grandparents may not avoid this result by renewing these arguments in a subsequent petition under section 388

²³ See also section 395.

²⁴ *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 259.

²⁵ *Dwayne P. v. Superior Court, supra*, 103 Cal.App.4th at page 259.

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or in an appeal from the court's order denying the petition. The juvenile court acted reasonably in summarily rejecting grandparents' petition.

In a separate section 388 petition, grandparents also claim that DPSS exceeded its authority in placing Victoria with nonrelatives and in failing to consider other relative placements both before and after the section 366.26 hearing on October 30, 2001. Unlike the other claims, this claim was raised in their appeal from the court's October 30, 2001, order. However, in our opinion, we rejected grandparents' argument primarily on the basis that the relative placement preference does not apply after the termination of parental rights.²⁷ Although grandparents have expanded their claim to include DPSS's placement decisions after the section 366.26 hearing, their claim is essentially identical to the one previously raised and rejected. Grandparents are collaterally estopped from relitigating the issue.²⁸

Additionally, grandparents raise other claims for which they have no standing to raise or no authority to support. For instance, grandparents appear to be asserting the rights of other relatives to have custody of Victoria. If a parent has no right to raise issues that address the child's relationship with other relatives, then certainly, a de facto

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²⁶ See *In re Dennis H.* (2001) 88 Cal.App.4th 94, 98; *In re Edward H.* (1996) 43 Cal.App.4th 584, 590-591; *In re Pedro N.* (1995) 35 Cal.App.4th 183, 189.

²⁷ See section 366.26, subdivision (k); *In re Sarah S.* (1996) 43 Cal.App.4th 274, 285.

²⁸ See *In re Joshua J.* (1995) 39 Cal.App.4th 984, 993.

parent has no right to raise such issues.²⁹ Also, grandparents appear to contend that, because DPSS did not inform them of child's transfer to the home of new prospective adoptive parents, DPSS abused its discretion in making its placement decision. The move occurred between one prospective adoptive home to another. The decision had nothing to do with them. Grandparents cite no authority requiring DPSS to provide contemporaneous notice of such decisions. Moreover, the former prospective adoptive parents requested the removal because of the harassing letters, telephone calls, and in-person visits.

This argument again demonstrates grandparents' efforts to relitigate the relative placement issue as many times and in as many variations as possible.

In any event, as discussed above, this court, like the juvenile court below, is powerless to reverse the adoption and order that Victoria be returned to grandparents or placed with other relatives. The juvenile court's order terminating its jurisdiction, from which grandparents did not appeal, eliminated all the above issues. As to these claims, no live controversy remains to be decided.

Additionally, we can discern no reason to review the issues based on the public interest exception. None of grandparents' claims present a question of continuing public importance that is capable of repetition, yet evading review.³⁰ As discussed above,

²⁹ See *In re L. Y. L.* (2002) 101 Cal.App.4th 942, 950; see also *In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261.

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application of the waiver doctrine would preclude review of many of grandparents' claims.

One of grandparents' claims that was not discussed above, the claim that the court erred in terminating its de facto status, also does not present a question of public importance that is capable of repetition because there is no longer an ongoing dispute in which grandparents' status could serve any purpose. "A 'de facto' parent is 'a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for as substantial period.' [Citations.]"³¹ The de facto parent, based on his or her existing bond with the child, is entitled to certain rights in the dependency proceedings.³² Upon the termination of the dependency, the de facto parent status serves no practical purpose. Stated differently, when the adoption is final, the de facto parent has no reason to assert his or her interest before the juvenile court to the companionship, care, custody, and management of the child.³³ The adoption creates a new legal relationship between the adoptive parents and the child, bestowing on them the

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³⁰ See *In re Christian A.*, *supra*, 91 Cal.App.4th at page 1158.

³¹ *In re Patricia L.* (1992) 9 Cal.App.4th 61, 66.

³² *In re Patricia L.*, *supra*, 9 Cal.App.4th at page 66.

³³ *In re Patricia L.*, *supra*, 9 Cal.App.4th at page 66.

rights and duties associated with that relationship, to the exclusion of other, unless otherwise provided by the court.³⁴

Furthermore, grandparents' de facto status claim does not implicate a question of broad public importance because the issue is heavily dependent on the particular facts in this case. The case turns on whether substantial evidence supported the court's finding that there was a change in circumstances justifying the termination of the status (i.e., that grandparents no longer qualified as de facto parents and that they were indirectly, if not directly, responsible for harassing the prospective adoptive parents). Under these circumstances, we conclude that the public interest exception does not apply.

We therefore conclude the court's termination of its jurisdiction based on Victoria's finalized adoption rendered moot all of grandparents' challenges to the court's orders granting DPSS's request to terminate de facto parent status and denying grandparents' section 388 petitions.

4. Mootness: Restraining Order

The court's order terminating its jurisdiction, however, did not affect the restraining order against grandmother. Grandmother claims that the court erred in granting the restraining order because insufficient evidence supported the court's findings.

³⁴ See *In re Albert G.*, *supra*, 113 Cal.App.4th at page 135; see *Hirenia C.*, *supra*, 18 Cal.App.4th at page 519 (showing exception when court orders visitation).

Based on grandmother's harassing conduct against the prospective adoptive parents, DPSS initially requested and the court granted a temporary restraining order against grandmother on January 16, 2003. DPSS later requested that the court issue a permanent restraining order. On March 27, 2003, during the hearing on DPSS's order to show cause, the juvenile court granted the request and issued a three-year restraining order against grandmother. Grandparents specifically included the court's decision to grant the restraining order in their notice of appeal.

A restraining order, like any other order granting an injunction, is a separately appealable order.³⁵ Because grandmother included the restraining order in her notice of appeal, this court has jurisdiction to review the order unless some other limitation applies.³⁶

The mootness doctrine does not apply to limit appellate review. Unlike the other orders, the restraining order remains in effect after the termination of the dependency. Section 213.5 gives the juvenile court the authority to issue ex parte orders.³⁷ Subdivision (a) of that section provides: "After a petition has been filed pursuant to

³⁵ See Code of Civil Procedure section 904.1; *McLellan v. McLellan* (1972) 23 Cal.App.3d 343, 357.

³⁶ See *Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1284 (stating notice of appeal requirement).

³⁷ Section 213, subdivision (a); California Rules of Court, rule 1429(a) (hereafter Rule 1429); see also sections 311 and 332.

Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining any person from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2). A court issuing an ex parte order pursuant to this subdivision may simultaneously issue an ex parte order enjoining any person from contacting, threatening, molesting, attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace of any parent, legal guardian, or current caretaker of the child, regardless of whether the child resides with that parent, legal guardian, or current caretaker, upon application in the manner provided by Section 527 of the Code of Civil Procedure.” Under this provision, the court may issue a restraining order to protect both the child and the child’s current caretaker.

Once the court issues a restraining order, after notice and a hearing, “[a]ny restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed three years, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by

further order of the court on the motion of any party to the restraining order.”³⁸ The order, therefore, terminates if so ordered by the court or upon the expiration date listed on the face of the order.³⁹

Even when the juvenile court terminates its jurisdiction, the order remains enforceable. “Any willful and knowing violation of any order granted pursuant to subdivision (a) . . . shall be a misdemeanor punishable under Section 273.65 of the Penal Code.”⁴⁰ Thus, section 213.5 may authorize the commencement of criminal proceedings to enforce the order.

A restraining order is akin to the orders granting visitation upon termination of dependency jurisdiction.⁴¹ “Under section 362.4, when the juvenile court terminates its jurisdiction over a dependent child, it may enter visitation orders that will be transferred to an existing family court file [citation], *or* visitation orders that may be used as the basis for opening a superior court file [citation]. Thereafter, the parties may seek the assistance of the superior court to enforce or modify the order. [Citation.]”⁴²

³⁸ Section 213.5, subdivision (d); rule 1429(h).

³⁹ See rule 1429(j).

⁴⁰ Section 213.5, subdivision (h); rule 1429(k).

⁴¹ See generally *In re Joshua C.*, *supra*, 24 Cal.App.4th 1544; *Hirenia C.*, *supra*, 18 Cal.App.4th 504; see also *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 274 (mediation order).

⁴² *Hirenia C.*, *supra*, 18 Cal.App.4th at page 518.

In the same way, section 362.4 allows the parties to seek the assistance of the superior court to enforce a restraining order by transferring the order to an existing superior court file or opening a new superior court file. In addition to a custody or visitation order, section 362.4 specifically refers to “a protective order as provided for in Section 213.5 or as defined in Section 6218 of the Family Code.”⁴³ As stated above, unless modified or terminated by court order, the restraining order remains in effect beyond the termination of dependency jurisdiction.⁴⁴

Accordingly, the restraining order is subject to review. “The fact that the dependency action has been dismissed should not preclude review of a significant basis for the assertion of jurisdiction where exercise of that jurisdiction has resulted in orders which continue to adversely affect appellant.”⁴⁵ If the jurisdictional basis for the restraining order is found to be erroneous, such error should be addressed and corrected in a direct appeal to avoid insulating the error from review.⁴⁶ The mootness doctrine does not preclude review when the error is of such magnitude as to infect the outcome of future proceedings or where the error undermines the court’s jurisdictional finding.⁴⁷

⁴³ Section 362.4.

⁴⁴ Section 362.4; see also rule 1429(j).

⁴⁵ *In re Joshua C.*, *supra*, 24 Cal.App.4th at page 1548.

⁴⁶ See *In re Joshua C.*, *supra*, 24 Cal.App.4th at page 1548.

⁴⁷ See *In re Joshua C.*, *supra*, 24 Cal.App.4th at page 1547.

Furthermore, because the restraining order remains in effect and is enforceable, the order may present an issue that continues to affect the parties' rights.⁴⁸ Here, the order continues to prevent grandmother from harassing or having any contact with Victoria and her current caretakers. The order also requires that grandmother remain 100 yards from Victoria's school or home. The order remains in effect for three years, commencing on the date of the hearing on March 27, 2003. Based on these facts, the restraining order continues to affect the parties' rights and, therefore, is subject to review.

5. Sufficient Evidence Supports the Restraining Order

In challenging the restraining order, grandmother claims that insufficient evidence supported the juvenile court's findings.

On November 12, 2002, DPSS filed an ex-parte application for a temporary restraining order against grandmother based in part on a letter sent by Victoria's prospective adoptive mother concerning grandmother's unannounced visit to the prospective adoptive home. After issuing a temporary restraining order, the court scheduled a hearing on DPSS's application.

Grandmother submitted several evidentiary objections to the statements made in DPSS's application and the evidence attached to the application.

DPSS filed three addendum reports with attachments, including the following: copy of the chapter from the book, "Grandparents fight to keep their grandchildren – Remember Cynthia Rose," by Jeanne Sinclair-Krause; letters addressed to the

⁴⁸ See *Hirenia C.*, *supra*, 18 Cal.App.4th at pages 517-518.

prospective adoptive family; and copies of newspaper or internet articles discussing Victoria's case. Grandmother amended her objections to include this additional information.

During the hearing on DPSS's application, the court sustained grandmother's objections to certain statements made in DPSS's application on grounds that the statements constituted inadmissible hearsay or lacked foundation. However, the court admitted, over grandmother's objections, certain evidence including evidence of the social worker's personal observations and the adoptive mother's letter. The court then granted the application and issued the restraining order.

We first note that grandmother misconstrues the scope of the court's evidentiary ruling. A review of the transcript does not show that the court made such a sweeping ruling on grandmother's objections. Instead, the court's ruling had no effect on most of the evidence presented by DPSS, including the social worker's reports and the documentary evidence attached to the application and the reports. Thus, while the court excluded the statements in DPSS's ex-parte application, the other items of admissible evidence established many of the same facts.

The restraining order primarily barred grandmother from contacting or harassing Victoria's current caretakers. Although section 213.5 provides criteria for issuing a restraining order excluding a person from a residence or dwelling,⁴⁹ it does not provide

⁴⁹ Section 213.5, subdivision (e).

any specific criteria for issuing a restraining order to refrain from contact or other conduct. Although the statute does not contain specific criteria, the court's order would be justified if the court found that the person engaged in or threatened to commit one of the inappropriate activities listed in section 213.5, subdivision (a).

During the hearing, the court based its ruling on the fact that grandmother, after somehow obtaining confidential information concerning Victoria's placement, inappropriately used the information to contact the prospective adoptive parents. Section 213.5 allows the court to issue a restraining order to prevent grandmother from contacting, threatening, and disturbing the peace of the child or the child's current caretakers.⁵⁰ Regardless of whether grandmother deliberately or unintentionally obtained information concerning Victoria's placement, grandmother should not have used the information to contact the adoptive parents or elicit other family members, friends, and even strangers to do the same. The record supports the trial court's findings that grandmother engaged in such inappropriate conduct.

In reviewing a claim of insufficiency of the evidence, we apply the substantial evidence test.⁵¹ We review the entire record to determine whether it discloses substantial evidence—i.e., evidence that is reasonable, credible, and of solid value—and any

⁵⁰ Section 213.5, subdivision (a).

⁵¹ *In re Jasmin C.* (2003) 106 Cal.App.4th 177, 180.

reasonable inference drawn thereof, to support the court's findings.⁵² We view the evidence and resolve every factual conflict in favor of the prevailing party.⁵³

Even after excluding the inadmissible evidence, the court had ample evidence upon which to find that grandmother directly or indirectly subjected the prospective adoptive parents to constant harassment to dissuade them from adopting Victoria. In her letter, prospective adoptive mother informed the social worker that grandmother appeared at their home at 6:30 p.m. on November 8, 2002. Grandmother told the prospective adoptive mother about an upcoming televised report featuring Victoria's story. When the prospective adoptive mother asked grandmother to leave, grandmother "became very agitated and starting hurling accusations" at her. Grandmother also divulged other confidential information concerning Victoria's previous placements. After the encounter, the prospective adoptive parents had "grave concerns about the safety and wellbeing of [their] family."

The social worker also received an anonymous flyer, accusing DPSS of wrongfully taking Victoria away from her family. On the bottom of the flyer was grandmother and grandfather's electronic mail (e-mail) addresses. Based on the handwritten notes, DPSS viewed the flyer as a "veiled threat" against the social worker.

⁵² *In re A.A.* (2003) 114 Cal.App.4th 771, 782; *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.

⁵³ *In re Jasmine C.*, *supra*, 70 Cal.App.4th at page 75.

In her declaration, the social worker noted that the prospective adoptive parents had received various letters, flyers, photographs, and other materials from grandmother or her family. In what appears to be a form letter, the senders, who identify themselves as “friends and family of [Victoria],” urge the recipients to reconsider their plans to adopt Victoria. In her February 3, 2003, addendum report, the social worker noted that the court had issued a restraining order against one of grandparents’ nephews for contacting the prospective adoptive parents in person. Attached to this report were photographs and other materials documenting additional contacts with the prospective adoptive family.

In her next addendum report, the social worker noted that the prospective adoptive parents had received another packet of materials. The packet included a copy of chapter five from the Sinclair-Krause book, describing Victoria’s story from grandparents’ perspective. The chapter reveals confidential information concerning Victoria’s case, including the social worker’s identity. The packet also contained a newspaper article concerning the case. The social worker noted that grandparents’ actions “have jeopardized [Victoria’s] placement and stability, and are not acting in Victoria’s best interest.”

In her own declaration, grandmother admitted that, on November 8, 2002, she went to the adoptive home and talked to the adoptive mother about Victoria. Grandmother also admitted talking to the adoptive mother about a televised report on Victoria’s case. Grandmother also stated that she provided Jeanne Sinclair-Krause with information about Victoria.

In her March 4, 2003, addendum report, the social worker noted that the prospective adoptive parents have received more cards, letters, and copies of newspaper articles. One article published on <thedesertsun.com> internet website contains pictures of grandmother and Victoria.

Based on this evidence, the court reasonably could have found that grandmother violated the confidentiality laws and initiated contact with the prospective adoptive family. While a party to the dependency proceedings may have access to certain information, juvenile dependency documents are confidential and cannot be disseminated to the public.⁵⁴ The state has a strong public policy to protect the confidentiality of juvenile court records and proceedings.⁵⁵ The public's constitutional right to access, as in criminal cases, does not extend to juvenile dependency proceedings.⁵⁶ The court exercises discretion in determining if and how information should be disclosed to individuals or entities not involved in the proceedings.⁵⁷ In exercising its discretion, the child's best interest is the court's primary concern.⁵⁸

⁵⁴ See section 827.

⁵⁵ *In re Tiffany G.* (1994) 29 Cal.App.4th 443, 450.

⁵⁶ *In re Tiffany G., supra*, 29 Cal.App.4th at page 450.

⁵⁷ *In re Tiffany G., supra*, 29 Cal.App.4th at page 450.

⁵⁸ *In re Tiffany G., supra*, 29 Cal.App.4th at page 450.

The social worker's reports state that the child has been placed in a confidential adoptive home. The reports also contain the following notice: "Confidential in accordance with Penal Code Section 11167.5 and/or WIC Sections 827 and 10850."

By her own admission, grandmother was the first person to breach confidentiality by visiting the prospective adoptive parents at their home. The prospective adoptive mother's letter and grandmother's declaration provides substantial evidence that grandmother violated the confidentiality rules and inappropriately visited the prospective adoptive home.

Additionally, while grandmother claims that she did not send any letters or materials to the prospective adoptive mother, the court was entitled to disbelieve her denials.⁵⁹ Instead, based on the information and photographs provided on the cards, letters, photographs, flyers, newspaper articles, and the Sinclair-Krause book, the court reasonably inferred that grandmother shared confidential information with her family members, friends, and other members of the public. Many of the documents sent to the prospective adoptive home contained confidential information concerning Victoria's case. Many of the documents also contained grandmother's name and contact information. The Sinclair-Krause book and certain newspaper or internet articles also included photographs of grandmother with Victoria. Most of the contacts were made by individuals claiming to be relatives or friends of grandmother's family. Based on the

⁵⁹ See *Kelly-Zurian v. Wohl Shoe Co.* (1994) 22 Cal.App.4th 397, 409.

evidence in the record, the court reasonably inferred that grandmother indirectly instigated or participated in activity that harassed and threatened the prospective adoptive family, as well as disrupted the adoptive placement.

The prospective adoptive parents ultimately requested that Victoria be removed from their home. DPSS was forced to place Victoria in another confidential adoptive home.

We conclude that substantial evidence supported the trial court's findings and order.

6. Disposition

We dismiss the appeal of the juvenile court's orders granting DPSS's section 388 petition and denying grandparents' section 388 petitions. We deny the motion to dismiss the appeal from the restraining order. We affirm the restraining order.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/Gaut
J.

We concur:

s/Hollenhorst
Acting P. J.

s/Richli
J.